



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
LANSING



DAN WYANT
DIRECTOR

June 3, 2014

CERTIFIED MAIL

Ms. Mary Setnicar, Chief
RCRA/TSCA Programs Section (LR-8J)
RCRA Branch
Land and Chemicals Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Dear Ms. Setnicar:

SUBJECT: Signed Attorney General's Statement (AGS) for Final Express Authorization Revision Application (ARA) for Michigan's Hazardous Waste Management Program

Enclosed please find the final AGS with original signature, dated May 29, 2014, and sealed as requested by Ms. Judy Greenberg of your staff on March 14, 2014. This completes Michigan's final express ARA for the federal Resource Conservation and Recovery Act of 1976 (RCRA) Revision Checklists 216-228. The AGS is being provided in accordance with the state's RCRA Work Plan for Fiscal Year 2014 and Title 40 of the Code of Federal Regulations, Section 271.21, Procedures for Revision of State Programs. We look forward to prompt authorization of Michigan's Hazardous Waste Management Program.

If you have any questions, please contact Ms. Ronda L. Blayer, Environmental Engineering Specialist, Hazardous Waste Section, Office of Waste Management and Radiological Protection, Michigan Department of Environmental Quality (MDEQ), at 517-284-6555, or you may contact me.

Sincerely,

Bryce Feighner, P.E., Chief
Office of Waste Management and
Radiological Protection
517-284-6857

Enclosure

cc: Ms. Judy Greenberg, U.S. Environmental Protection Agency, Region 5
Ms. DeLores Montgomery/Ms. Ginny Himich, MDEQ
Mr. Jack Schinderle, MDEQ

cc/enc: Ms. Ronda L. Blayer, MDEQ
Amendment 10, Authorization Application (for November 5, 2013, rules), Official
Authorization Application File, Draft 2

*Received
6/9/2014
Land + Chemicals
Division
jag*

**ATTORNEY GENERAL STATEMENT
FOR FINAL AUTHORIZATION FOR CHANGES
TO THE FEDERAL HAZARDOUS WASTE PROGRAM**

I hereby certify, pursuant to my authority as Attorney General and in accordance with Section 3006(b) of the federal Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (Title 42 of the United States Code, Section 6901 *et seq.*), and Title 40 of the Code of Federal Regulations (CFR), Part 271, that in my opinion the laws of the state of Michigan provide adequate authority to carry out the hazardous waste program set forth in the Program Description submitted by the Michigan Department of Environmental Quality in support of the program authorization granted on June 1, 1999, and the Program Description Addendums submitted in support of the program authorization granted on July 31, 2002; March 9, 2006; January 7, 2008; March 2, 2010; and this Addendum, and to meet the requirements of 40 CFR, Part 271, Subpart A. The specific authorities provided are contained in statutes or regulations lawfully adopted and in effect at the time this statement is signed. The statutory authorities for the state are documented in the Michigan Abbreviated RCRA Statutory Checklist, dated September 24, 2013, and attached to this statement (see Attachment 1). In my opinion, statutes relied on in previously approved authorization applications have not been amended, modified, or revised by statute or judicial decision in a way that diminishes or interferes with the authority to carry out the previously authorized hazardous waste program to meet the requirements of 40 CFR, Part 271, Subpart A.

The provisions for which the state is seeking authorization are documented in the RCRA Revision Checklists, which were submitted to the U.S. Environmental Protection Agency, Region 5, in conjunction with Region 5's review and approval of the proposed revisions to the subject administrative rules. Any differences between the state provisions and the federal provisions are noted on the RCRA Revision Checklists. The official state regulations may be found in Michigan Administrative Code R 299.9101 *et seq.*, effective November 5, 2013. This statement certifying Michigan's authority to carry out the program supplements my predecessors' certifications that supported the program authorizations granted on October 30, 1986; January 23, 1990; June 24, 1991; November 30, 1993; January 13, 1995; April 8, 1996; June 1, 1999; July 31, 2002; March 9, 2006; January 7, 2008; and March 2, 2010.

Seal of Office



Signature

for Bill Schuette
Attorney General
State of Michigan

Date

5/29/14

Attachment 1

Michigan Abbreviated RCRA Statutory Checklist

MICHIGAN ABBREVIATED RCRA STATUTORY CHECKLIST

Title of Legislation/Date Enacted: Part 111, Hazardous Waste Management, of Michigan's Natural Resources and Environmental Protection Act, 1994 PA 451, originally enacted March 30, 1995, as amended, up to and including, Act 73 of 2013, effective October 1, 2013

Title of Legislation/Date Enacted: Michigan's Administrative Procedures Act, 1969 PA 306, originally enacted July 1, 1970, as amended

Date Abbreviated RCRA Statutory Checklist Prepared: September 24, 2013

Statutory Element	Part 271 Reference	RCRA Cite	State Cite
1. DEFINITIONS			
Title 40 of the Code of Federal Regulations (CFR), Part 271, does not specifically address definitions of terms. The federal program relies on various definitions to establish the applicability and scope of the hazardous waste regulations. If the definitions of these terms appear in state statutes, they should be at least as stringent as the analogous federal statutory or regulation definitions. States should have the authority to define the following terms in a manner at least as stringent as the federal program.			
Disposal	N/A	§1004(3)	Michigan Compiled Laws (MCL) 324.11102(4)
Generator	N/A	Not in RCRA; see 40 CFR §260.10 definition	MCL 324.11103(2)
Hazardous waste	N/A	§1004(5)	MCL 324.11103(3)
Manifest	N/A	§1004(12)	MCL 324.11103(8)
Person	N/A	§1004(15)	MCL 324.301(h)
Storage	N/A	§1004(33)	MCL 324.11104(4)
Transport	N/A	Not in RCRA; see 40 CFR §260.10 definition of transportation	Michigan Administrative Code (MAC) R 299.9108(i)
Treatment	N/A	§1004(34)	MCL 324.11104(9)
Treatment, storage, or disposal (TSD) facility	N/A	Not in RCRA; see 40 CFR §260.10 definition of facility	MCL 324.11102(5) and 324.11104(5) and (10) and MAC R 299.9103(q)
Waste (solid)	N/A	§1004(27)	MCL 324.11104(3) and 324.11506(1) and MAC R 299.9109(gg) and R 299.9202
Remarks of the Attorney General: None			
II. HAZARDOUS WASTE IDENTIFICATION AND LISTING [See 40 CFR §271.9]			
1. Authority to adopt a set of characteristics for identifying hazardous waste and a list of hazardous wastes that are no less stringent than, and consistent with, the federal program, and to control all hazardous wastes controlled under 40 CFR, Part 261.	271.9(a)	§§3001(a), (b), (d), (e), and (i) and 3018(b)	MCL 324.11103(3), 324.11105, 324.11126, 324.11127, and 324.11128
2. <u>Delisting (Optional)</u> : Authority to provide a delisting mechanism with regulations that are	271.9(b)	§3001(b) and (f)	MCL 324.11103(3), 324.11105, 324.11126,

equivalent to 40 CFR §§260.20(b) and 260.22 and that meets the requirements of RCRA §3001(f)(1) and (2).			324.11127, and 324.11128 (State only has partial delisting authority, which does not include process wastes)
Remarks of the Attorney General: None			
III. STANDARDS FOR GENERATORS [See 40 CFR §271.10]			
Authority to regulate all generators the United States Environmental Protection Agency (EPA) regulates under 40 CFR, Part 262, and to adopt requirements that are no less stringent than, and consistent with, the federal generator requirements.	271.10	§§3001, 3002, and 3017	MCL 324.11103(2), 324.11105, 324.11126, 324.11127, and 324.11138
Remarks of the Attorney General: None			
IV. STANDARDS FOR TRANSPORTERS [See 40 CFR §271.11]			
Authority to regulate all transporters EPA regulates under 40 CFR, Part 263, and to adopt requirements that are no less stringent than, and consistent with, the federal transporter requirements.	271.11	§§3001 and 3003	MCL 324.11104(8), 324.11105, 324.11126, 324.11127, 324.11132a, 324.11133, and 324.11136
Remarks of the Attorney General: None			
V. STANDARDS FOR HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES [See 40 CFR §271.12]			
1. Authority to regulate all owners/operators of TSD facilities that EPA regulates under 40 CFR, Parts 264 and 266, and to adopt technical standards, requirements, and prohibitions that are no less stringent than, and consistent with, the federal TSD facility requirements.	271.12	§3004	MCL 324.11102(5), 324.11104(5) and (10), 324.11105, 324.11126, 324.11127, and 324.11137
2. Authority to require corrective action in a manner that is no less stringent than, and consistent with, the federal corrective action requirements.	271.12	§3004(a)(6), (u) and (v)	MCL 324.11102(2) and (5), 324.11104(5) and (10), 324.11105, 324.11115a, 324.11115b, 324.11126, and 324.11127
Remarks of the Attorney General: None			
VI. LAND DISPOSAL RESTRICTIONS [See 40 CFR §271.25]			
Authority to enact land disposal restrictions that are no less stringent than, and consistent with, the federal land disposal restrictions in 40 CFR, Part 268.	271.25	§3004(d)-(g), (j), and (m)	MCL 324.11103(3), 324.11105, and 324.11126 to 324.11128
Remarks of the Attorney General: None			
VII. PERMITS FOR HAZARDOUS WASTE, TREATMENT, STORAGE, AND DISPOSAL FACILITIES [See 40 CFR §§271.13 and 271.14]			
1. Authority to require permits for owners/operators of all TSD facilities in a manner that is no less stringent than, and consistent with, the federal permit program under 40 CFR, Parts 270 and 124.	271.13(a)	§3005(a)	MCL 324.11102(5), 324.11104(5) and (10), 324.11105, 324.11115, 324.11123 to 324.11127, 324.11137, and 324.11139
2. Authority to require permit application information (including exposure information) and to issue permits containing all technical and administrative standards for facilities and any conditions necessary to protect human health and the environment.	271.13(a) 271.14	§§3005(b), (c)(3), and (g), and 3019(a)	MCL 324.11102(5), 324.11104(5) and (10), 324.11105, 324.11115, 324.11123 to 324.11127, 324.11137, and 324.11139
3. Authority to provide for permit modification	271.13(d)	§3005(c) and	MCL 324.11102(5),

and termination (revocation) in a manner that is no less stringent than, and consistent with, the federal program.	271.14	(d)	324.11104(5) and (10), 324.11105, 324.11115, 324.11123 to 324.11127, 324.11137, and 324.11139
4. <u>Interim Status</u> : Authority to authorize owners or operators of TSD facilities to operate under interim status if the facility would qualify for interim status under the federal program. ⁱⁱ	271.13(a)	§3005(e)(1)	MCL 324.11102(5), 324.11104(5) and (10), 324.11105, 324.11115, 324.11123 to 324.11127, 324.11137, and 324.11139
5. <u>Interim Status</u> : Authority to require interim status to terminate under conditions that are equivalent and consistent with the federal program. ⁱⁱⁱ	271.13(a)	§3005(e)(2) and (3)	MCL 324.11102(5), 324.11104(5) and (10), 324.11105, 324.11115, 324.11123 to 324.11127, 324.11137, and 324.11139
6. <u>Interim Status</u> : Authority to require interim status facilities to comply with standards at least as stringent as those in 40 CFR, Part 265.	271.13(a)	§§3005(e)(1), (h), and (i), and 3015	MCL 324.11102(5), 324.11104(5) and (10), 324.11105, 324.11115, 324.11123 to 324.11127, 324.11137, and 324.11139
7. <u>Interim Status</u> : Authority to require interim status impoundments to comply with the double liner, leachate collection, and groundwater monitoring requirements applicable to new units or stop treating, receiving, or storing hazardous wastes. (SR1) ^{iv}	271.13(a)	§3005(j)	MCL 324.11102(5), 324.11104(5) and (10), 324.11105, 324.11115, 324.11123 to 324.11127, 324.11137, and 324.11139
8. <u>(Optional)</u> : Authority to modify the double liner, leachate collection, and groundwater monitoring requirements for impoundments in §3005(j)(1) if prior to October 1, 1984; the owner/operator has entered into a consent decree, order, or agreement with EPA or an authorized state that requires correction and provides protection of human health and the environment at least equivalent to that in §3005(j)(1). (SR2) ⁴	271.13(a)	§3005(j)(2)-(9) and (13)	MCL 324.11102(5), 324.11104(5) and (10), 324.11105, 324.11115, 324.11123 to 324.11127, 324.11137, and 324.11139

Remarks of the Attorney General: None

VIII. PUBLIC PARTICIPATION [See 40 CFR §271.14]

Authority to adopt public participation procedures for the permit process.	271.14(v) - (aa)	§7004(b)	MCL 24.291 and 24.292, MCL 324.11105, 324.11126, and 324.11127, and MAC R 299.9509 to R 299.9511 and R 299.9513 to R 299.9515
--	------------------	----------	---

Remarks of the Attorney General: None

IX. REQUIREMENTS FOR USED OIL MANAGEMENT [See 40 CFR §271.26]

Authority to promulgate regulations establishing special generator and transporter standards, performance standards, and other requirements as may be necessary to protect human health and the environment from hazards associated with recycled used oil, as specified in 40 CFR, Part 279. ⁵	271.26	§3014(a), (c) and (d) ^v	MCL 324.11103(3), 324.11105, 324.11126, 324.11127, and 324.11128
--	--------	------------------------------------	--

Remarks of the Attorney General: None

X. INSPECTIONS [See 40 CFR §271.15]

Authority to enter, inspect, and obtain samples at all regulated premises and any location where records are kept.	271.15(c)	§3007	MCL 324.11105, 324.11124, 324.11126, 324.11127, 324.11144, and 324.11146
--	-----------	-------	--

Remarks of the Attorney General: None

XI. ENFORCEMENT REMEDIES (INCLUDING PUBLIC PARTICIPATION IN ENFORCEMENT)^{vi} [See 40 CFR §271.16]

1. Authority to immediately restrain unauthorized activity.	271.16(a)(1)	§3006	MCL 324.11105, 324.11126, 324.11148, 324.11150, and 324.11151
2. Authority to sue to enjoin any threatened or continuing program violation without prior revocation of permit.	271.16(a)(2)	§3006	MCL 324.11105, 324.11126, 324.11148, 324.11150, and 324.11151
3. Authority to obtain civil penalties for any violation (maximum no less than \$10,000 per day).	271.16(a)(3)(i), (b), and (c)	§3006	MCL 324.11105, 324.11126, 324.11148, 324.11150, and 324.11151
4. Authority to obtain criminal penalties for specified maximum violations (no less than \$10,000 per day and imprisonment with maximum no less than six months); burden of proof no greater than under federal law.	271.16(a)(3)(ii) & (b)	§3006	MCL 324.11105, 324.11126, 324.11148, 324.11150, and 324.11151
5. Authority to allow public intervention.	271.16(d)	§7004	MCL 324.11126 and 324.11151(11)
6. <u>Optional</u> : Require that neither the state nor citizens may bring action against common carriers for imminent hazards arising after delivery of the shipment to the consignee, provided the carrier exercised due care when handling the work.	Not required	§7002(g) §7003(a)	N/A

Remarks of the Attorney General: None

XII. SHARING OF INFORMATION WITH EPA [See 40 CFR §271.17]

Authority to share all information with EPA	271.17(a)	§3007(b)	MCL 324.11129
---	-----------	----------	---------------

Remarks of the Attorney General: None

XIII. EXPOSURE ASSESSMENTS

Authority to make exposure and health assessment information available to the Agency for Toxic Substances and Disease Registry (See Comprehensive Environmental Response, Compensation and Liability Act, 1980 PL 96-510 §104(i)) (SI) ⁴	Not in 40 CFR, Part 271	§3019(b)(1)	MCL 324.11129
---	-------------------------	-------------	---------------

Remarks of the Attorney General: None

XIV. RADIOACTIVE MIXED WASTE

Authority to regulate hazardous waste that is radioactive except to the extent that the waste is source, special nuclear, or byproduct material, as defined by the Atomic Energy Act of 1954, as amended. (68 Stat. 923) (MW) ^{4, vii}	271.9(a)	§1004(27)	MCL 324.11103(3), 324.11105, 324.11126, 324.11127, and 324.11128
---	----------	-----------	--

Remarks of the Attorney General: None

XV. AVAILABILITY OF INFORMATION [See 40 CFR §271.17]

Authority to make information about TSD facilities available to the public in substantially the same manner and to the same degree as if the EPA were running the program (AI) ⁴	271.17(c)	§3006(f)	MCL 324.11129
---	-----------	----------	---------------

Remarks of the Attorney General: None

XVI. ADDITIONAL MISCELLANEOUS AUTHORITIES

1. Authority to grant variances and exemptions that are no less stringent than allowed by Subtitle C of the RCRA. ^{viii}	Not required	N/A	MCL 324.11105, 324.11126, 324.11127, and 324.11128
2. Importation ban. ^{ix}	Not required	N/A	N/A
3. Siting. ^x	Not required	N/A	MCL 324.11105, 324.11121, 324.11123 to 324.11126, 324.11127, and 324.11128
4. Authority to adopt existing and/or future federal regulations by reference (current and prospective incorporation by reference). ^{xi}	N/A	N/A	MCL 324.11126 and 324.11127 (State has the authority to adopt current regulations but not to adopt regulations prospectively)
5. Limitation on state authority to adopt more stringent or broader in scope provisions.	N/A	N/A	N/A
Remarks of the Attorney General: None			

EXPLANATORY NOTES

ⁱ States must have authority to regulate the recycling and reuse of hazardous waste in a manner at least as stringent as the federal program.

ⁱⁱ States are not required to provide interim status for TSD facilities. However, if a state chooses to provide for interim status, then the state must have authority described in Items 4 through 8 of Section VII.

ⁱⁱⁱ A state's analog to interim status must terminate automatically in these cases (whether the state's analog is 40 CFR, Part 265, type standards or permits). If a state statute or regulation would require any type of hearing to terminate the facility's operating authority, the state must amend its authority to delete that requirement for these provisions. (Interim status as used here means the state's analog to federal interim status.)

^{iv} The following items are part of the "Statutory Nonchecklisted Provisions addressed in Appendix N of the hard copy version of the State Authorization Manual -- Guidance for State Authorization Issues:

AI - Availability of Information

MW - Mixed Waste

SI - Sharing of Information

SR1 - Surface Impoundment Requirement

SR2 - Optional: Exemptions from the Surface Impoundment Requirements

Also, see the Availability of Information Checklist for a specific analysis of the manner and degree that the EPA provides for availability of information.

^v This used oil management authority originated at §3012 but was amended and redesignated as §3014(a) by the HSWA.

^{vi} RCRA contains enforcement provisions that differ from those listed in 40 CFR §271.16. Thus, the enforcement authority of an authorized state program need not be equivalent to the RCRA enforcement provisions. Instead, a state's authority should be adequate to meet the requirements listed in 40 CFR §271.16, which were established pursuant to §§3006 and 7004.

^{vii} The EPA has determined that hazardous wastes are subject to the RCRA if they are mixed with source, special nuclear, or byproduct material even though source, special nuclear, or byproduct material itself is not subject to the RCRA. States will need to review their authority to ensure that only source, special nuclear, or byproduct material is excluded from their hazardous waste jurisdiction.

^{viii} Various HSWA provisions amend the RCRA to allow the EPA to grant variances and exemptions. In addition to those variances specifically authorized by statute, the HSWA allows the EPA to develop regulations with variance provisions or to make case-by-case variance decisions. The EPA strongly recommends that states obtain the above authority. The state's variance procedures and decision criteria must be no less stringent than the EPA's.

^{ix} May create problems for a state seeking authorization. States with this authority should ensure that its statutory and regulatory provisions do not conflict with the EPA's requirements for imports/exports and transportation.

^x May create problems for a state seeking authorization. States with this authority should ensure that its statutory and regulatory provisions do not conflict with the EPA's requirements for permitting.

^{xi} For prospective incorporation of the federal regulations by reference, the Attorney General or Independent Legal Counsel must cite state authority that enables it both to promulgate and enforce regulations in this manner. States that incorporate by reference prospectively should provide a discussion on the constitutionality of the procedure within the state. Appropriate court case citations should also be provided.